

² There is disagreement between the parties as to whether the Guidelines were amended in 1996. Whether the amendment at issue was adopted in 1996 or 1999 is not material to the dispute.

glass windows and "any window treatment to create a similar exterior effect." In 1994, Mr. D'Aoust installed stained glass window treatment panels on the interior of the windows next to and above his front door. These panels create the visual effect of stained glass windows.

Prior to implementing any change to the Guidelines, the Board approached Mr. D'Aoust about removing the stained glass window panels. Both Mr. D'Aoust and the board attempted to resolve the dispute without success.

On October 28, 1999, after the Board promulgated the Guidelines in which Article II, Section I.4 prohibited stained glass windows and the appearance of stained glass windows, Mr. D'Aoust wrote to the President of the Board briefly outlining the stained glass window dispute and requesting that "the Board of Directors [] rescind the October 1, 1999 revision of the Architectural Guidelines, Exterior Maintenance, and Property Use Restrictions document, or [] amend the document so that Article II, Section I.4, which is intended to prohibit the installation of stained glass windows, be removed." Mr. D'Aoust cited three provisions of the Covenants to support his position. He alleged that Article II, Section I.4 of the Guidelines "grossly exceeds the provisions of Article VII, Section 7.02(u)" of the covenants; that the Board failed to comply with Article XII, Section 12.07(c)(xiii) of the covenants which give "Eligible Mortgage Holders" approval authority for certain changes to the covenants; and, that under Article VI, Section 6.01 of the covenants limits the Board's authority to exterior changes and alterations. Mr. D'Aoust concluded the letter asking the board to rescind the newly revised Guidelines, or "offer some other remedy." On December 7, 1999, the Board determined Mr. D'Aoust's window treatments were technically in violation, but decided that in light of the time that had passed and the facts of this case, the Board would grandfather in the window treatments and not pursue the matter as a violation of the Guidelines or Covenants.

In early February 2000, Mr. D'Aoust wrote to the Board, lodging his objections to the Board's finding of a technical violation of the guidelines and again requesting recession of the October 1999, revision to the guidelines. On March 1, 2000, Mr. D'Aoust filed the complaint in this case.

FINDINGS OF FACT

1. Michel B. D'Aoust, complainant, is a homeowner residing at 15706 Pissaro Terrace, North Potomac, MD 20878. This residence is located in the Quince Haven Homeowners Association.

2. The Quince Haven Homeowners Association is a community located in North Potomac, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions. The relevant provisions of the Declaration that govern this dispute are Article VI – Architectural Control and Article VII – Use Restrictions.
3. Mr. D'Aoust installed the stained glass window treatment inside the windows next to his front door in early 1994.
4. The Quince Haven Homeowners Association adopted a guideline provision prohibiting stained glass windows and window treatments that create the appearance of stained glass windows after August 1, 1996.
5. In a letter dated December 29, 1999, the Quince Haven Homeowners Association notified Mr. D'Aoust that "the Board determined that your window treatments are technically in violation, but in light of the time that has passed and the facts of this case, the Board has decided to 'grandfather in' your window treatments and will not pursue this matter as a violation of the Guidelines or Covenants."

CONCLUSIONS OF LAW

1. The Quince Haven Homeowners Association Declaration of Covenants, Conditions And Restrictions is a valid and enforceable document. See, Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).
2. A general rule of property law is that use restrictions are disfavored. Questions and ambiguities are construed against the party seeking enforcement. Bellevue Construction Co., Inc. v. Rugby Hall Community Association, Inc., 582 A.2d 493, 495 (Md. 1989). A "cardinal principle" in construing restrictive covenants is that the intention of the parties as documented in the instrument controls. Markey, 607 A.2d at 92.
3. A Homeowners Association derives its powers from its Declaration of Covenants, Conditions and Restrictions. Oakhampton Association, Inc. v. Reeve, et al., 637 A.2d 879, 884 (Md. App. 1994) citing Uniformed Planned Community Act (U.L.A. 1980) (prefatory note).

4. Article VI – Architectural Control, defines the Association's authority to regulate and approve or disapprove changes to the exterior of homes and the construction of other items (fences, sheds etc.) on privately owned property within the community.
5. Article VII – Use Restrictions outlines the limitations on prohibitions that may be imposed by the Board on homeowners.

DISCUSSION

The underlying dispute before us centers on Mr. D'Aoust's right to install stained glass window panels in the windows next to the front door of his house. Although the Board gave Mr. D'Aoust permission to keep his stained glass window treatment, in essence resolving the dispute between him and the community, he still challenged the promulgation of the Guidelines that contain the prohibition. Every homeowner has a right to challenge an action by the Board. Mr. D'Aoust asks the commission to order the Guidelines be rescinded because "the Board of Directors of the Quincehaven [sic] HOA failed to obtain the necessary consents to amend the architectural guidelines document; the revised provisions of the updated document exceed those of [sic] Declaration of Covenants."

However, at the hearing held on August 30, 2000, the only portion of the Guidelines about which Mr. D'Aoust expressed concern was the provision prohibiting stained glass windows and window treatments that create the appearance of stained glass windows.³ He made no arguments and presented no evidence challenging the Board's proper promulgation of the Guidelines as a whole and, except for the provision covering stained glass, Mr. D'Aoust did not indicate that any provision exceeded the authority of the Board. Therefore, the panel concludes that, except for the provision prohibiting stained glass windows and window treatments that create the appearance of stained glass windows, the Guidelines are enforceable.

The Declaration is the ultimate governing document for the Association. It defines what it may or may not do. The Association may not act outside the authority granted by the Declaration. It defines the members of the Association, Article IV, and gives the Association

³ Mr. D'Aoust's concern about the guidelines seemed somewhat disingenuous because at the hearing he offered to drop his challenge to the guidelines for a payment of \$1500, the amount he claims the windows cost. Overlay this offer with the statement by Mr. D'Aoust that the stained glass artist did not provide windows that Mr. D'Aoust liked, raised questions concerning the purpose of this action.

authority to collect assessments, Article V. The Declaration also allows the Association to impose certain architectural controls, Article VI, restrict the use of the lots, Article VII, and require the exterior of units to be maintained, Article VIII.

Article VI – Architectural Controls gives the Association its authority to limit and approve construction, alterations and/or modifications within the community.

No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including changes in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the community of the Property by the Board of Directors of the Association, or by a covenant committee composed of three (3) or more representatives appointed by the Board of Directors of the Association. Section 6.01.

Section 6.04 authorizes the Board to issue such rules, regulations, standards, guidelines and criteria regarding the architectural controls authorized by section 6.01. Article VI only deals with exterior changes. Therefore, the part of the Guideline provision that prohibits the installation of stained glass windows (i.e., as an exterior window) is authorized under section 6.04. This provision is enforceable. However, Article VI does not provide authorization for the portion of the provision that prohibits "any window treatment to create a similar exterior effect" to stained glass windows.

The Board argues that Section 7.02(u) authorizes a prohibition on stained glass window treatments. This provision states that "bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot." The panel concludes that the intent of this provision is to prohibit the temporary, inexpensive covering of windows with materials that significantly detract from the appearance of the community. The intent is not to prohibit or regulate any standard, traditional window treatment. Therefore, this provision does not authorize the prohibition of "any window treatment" that creates a stained glass window effect. Markey, 607 A.2d at 92.

Finally, the Board argues that section 7.04 House Rules allows the Board to implement this provision. Although this provision gives the Board broad authority to promulgate regulations, such authority is not unfettered. This provision implicitly includes the assumption that any rule or regulation adopted by the Board is within the penumbra of the Declarations. Restrictions on interior changes, unless specifically enumerated in the Declaration, are not. Therefore, the provision prohibiting "any window treatment" that creates a stained glass window effect is not enforceable.⁴

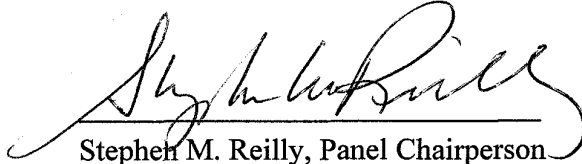
ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the commission finds:

Under the Declaration of Covenants, Conditions And Restrictions of the Quince Haven Homeowners Association, the Association has the authority to prohibit stained glass windows as an exterior window of the House. However, the Association does not have the authority to regulate window treatments not listed in the Declaration, even if these window treatments cause a window to have the exterior appearance of stained glass.

The foregoing was concurred in by panel members Price, Neel and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in black ink, appearing to read "Stephen M. Reilly", is written over a horizontal line.

Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership Communities

⁴ It should be noted, however, that this decision does not allow a homeowner to install a stained glass window treatment that contains a commercial sign or contains lewd or offensive language or pictures. There are other provisions of the declaration that allow prohibition of these items.